

## **McKool Smith**

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February 6, 2017

### **VIA EMAIL**

Hon. Alison J. Nathan  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square, Courtroom 906  
New York, New York 10007

RE: *Kashef, et al. v. BNP Paribas, S.A., et al.*, Case No. 1:16-cv-03228

Dear Judge Nathan:

We write on behalf of Plaintiffs in the above-referenced action to request that the names of Plaintiffs [REDACTED] and [REDACTED], two women who assert claims arising, among other things, from the fact that each was raped and contracted HIV in Sudan, be redacted from the public record as a result of their having heightened concerns about this information being public and fear of being ostracized as a result.

First, in the course of preparing the recently filed Second Amended Complaint, ECF No. 49, for the reasons above, we substituted the anonymous names "Jane Roe" and "Judy Doe" for previously named Plaintiffs [REDACTED] and [REDACTED], respectfully. The specific, detailed descriptions of each of them and their claims are set forth in paragraphs 41 and 44, respectively.

Unfortunately, their names remain on previously-filed documents on the case docket, easily available to the public. Therefore, Plaintiffs respectfully request the Court: (i) to seal this letter and order a redacted version removing the highlighted information herein to be filed; (ii) seal previously filed documents (ECF Nos. 1-6, 8, 9, 16, 29, and 30) and replace them with copies that redact only their names; and (iii) to strike the names of the two Plaintiffs from the ECF system and replace them with the anonymous names Jane Roe and Judy Doe.

Redacting this information meets the standards set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Under *Lugosch*, a common law presumption of public access applies to "judicial documents," defined as documents that are filed with the court and are "relevant to the performance of the judicial function and useful in the judicial process." *Id.* at 119 (quotation and citation omitted). The presumption's weight varies in accordance with "the role of the material at issue," with most information "fall[ing] somewhere on a continuum from

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matters that directly affect an adjudication to matters that come within a court's purview solely to insure their irrelevance." *Id.* (quotation and citation omitted). Once the weight of the presumption has been determined, "the court must balance competing considerations against" the presumption. *Id.* at 120 (quotation and citation omitted).

A complaint is a judicial document subject to the First Amendment presumption of public access. *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 140 (2d Cir. 2016). To seal information subject to this presumption, Plaintiffs must "demonstrate[e] that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Id.* (quotation and citation omitted).

Here, Plaintiffs' requested redactions are essential to preserving higher values and are narrowly tailored. Plaintiffs [REDACTED] and [REDACTED] were both raped and contracted HIV as a result. Both Plaintiffs face a significant risk of being ostracized in their close knit community of Sudanese-Americans should information pertaining to their health status become public. The public nature of this action, especially among the Plaintiffs' friends and community members, makes this concern more acute.

Importantly, Plaintiffs' requested redactions are also narrowly tailored. We seek to redact the two Plaintiffs' names only. The entire descriptions of their claims remain set forth in the pleadings.

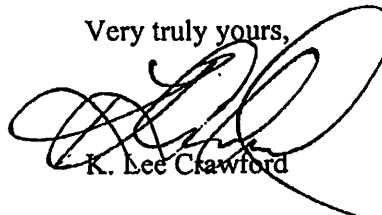
Per your Individual Practices in Civil Cases Rule 4(A), we have enclosed the following:

1. A redacted version of this letter;
2. A compendium of excerpts from documents bearing ECF Nos. 1-6, 8, 9, 16, 29, and 30 with the information to be redacted highlighted; and
3. Redacted versions of ECF Nos. 1-6, 8, 9, 16, 29, and 30.

Counsel for Plaintiffs have shown this letter and these requests to counsel for Defendants, and Defendants consent to them.

Thank you for your consideration of these requests. Please contact us if you have any questions.

Very truly yours,



K. Lee Crawford

cc: Lawrence B. Friedman

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Enclosures